

1 David J. Noonan, *Pro Hac Vice* (*MA Bar No. 373260)
2 **LAW OFFICE OF DAVID J. NOONAN**
3 32 Tanglewood Road
4 Amherst, Massachusetts, 01002
(413) 549-5491
noonan@law-djn.com

5 Gary N. Lento (028749)
6 **RADIX LAW**
7 15205 N. Kierland Blvd., Suite 200
8 Scottsdale, Arizona 85254
(602) 606-9300
lento@radixlaw.com

9
10 *Attorneys for Plaintiff FAVORITE HEALTHCARE STAFFING, LLC*

11
12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF ARIZONA**

14 Favorite Healthcare Staffing, LLC, a Kansas
15 limited liability company,

16 Plaintiff,

17 vs.

18 IASIS Healthcare Holdings, Inc., St. Lukes
19 Medical Center, L.P., and Mountain Vista
Medical Center, L.P.,

20 Corporate Defendants,

21 and

22 Ralph de la Torre; Michael Callum; and
23 Christopher Dunleavy;

24 Individual Defendants.

15 Case No.: 2:23-cv-01810-DJH

16
17 **PLAINTIFF'S MOTION TO ENFORCE**
SETTLEMENT AGREEMENT

18 (Assigned to the Honorable
19 Diane J. Humetewa)

20
21 *(ORAL ARGUMENT REQUESTED)*

22
23 ////

24
25

PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

1 COMES NOW the Plaintiff, Favorite Healthcare Staffing, LLC, d/b/a Favorite
 2 Healthcare (“Plaintiff” and/or “Favorite Healthcare”), and hereby moves this Court for an
 3 order enforcing and implementing the settlement agreement it reached with all Defendants in
 4 this matter (“Motion to Enforce”). This *Motion to Enforce* is based on this herein Motion,
 5 *Exhibits A through E* attached hereto, the *Memorandum in Support of this Motion* filed
 6 contemporaneously herewith (“Memorandum in Support of Motion”), the pleadings on file
 7 herein, and any such oral or documentary evidence that may be presented at the hearing on this
 8 matter.

9 **I. Relevant Facts**

10 1. Plaintiff has filed a multi-count complaint in this civil action against Defendants
 11 IASIS Healthcare Holdings, St. Lukes Medical Center, L.P., Mountain Vista Medical Center,
 12 L.P., sometimes collectively referred to herein as “Corporate Defendants;” and Defendants,
 13 Ralph de la Torre, Michael Callum, and Christopher Dunleavy, sometimes collectively
 14 referred to herein as “Individual Defendants.”

15 2. Pursuant to Paragraph 9 of this Court’s *Rule 16 Scheduling Order* (Doc. 22), the
 16 parties engaged in detailed settlement discussions by phone conference on February 16,
 17 2024.¹ The conference lasted in excess of 30 minutes and upon the conclusion of said
 18 conference, Plaintiff’s counsel reduced to writing the settlement offered by Plaintiff during
 19 the settlement conference. A copy of said settlement offer is attached hereto as ***Exhibit A***.
 20 (“Plaintiff’s First Settlement Offer”).

21 3. Five days later on February 21, 2024, all Defendants, by and through their counsel,
 22 responded to Plaintiff’s First Settlement Offer and accepted “all of the terms you propose,”
 23 except all Defendants sought an additional 15 days within which to make the agreed to
 24 settlement payment to Plaintiff. Attached hereto as ***Exhibit B*** is “Defendants’ Counteroffer.”

25 / / /

26

27 ¹ At the time of the settlement discussion, Plaintiff had previously served requests for production of
 28 documents on several of the defendants and had scheduled depositions for three of the defendants, all
 of this discovery was postponed as a result of the settlement discussions.

1 4. On February 21, 2024, Plaintiff responded to Defendants' Counteroffer by
 2 accepting Defendants' request for an additional 15 days within which to make the settlement
 3 payment, but only if Defendants would enter into a consent judgment in the full amount
 4 prayed for and that said consent judgment would be "pocketed" and not filed unless
 5 Defendants failed to perform as agreed. A copy of Plaintiff's response to Defendants'
 6 Counteroffer is attached hereto as ***Exhibit C***.

7 5. On February 28, 2024, all Defendants, through email by Defendants' counsel
 8 accepted the counteroffer settlement terms proposed by Plaintiff as set forth in ***Exhibit C***.
 9 Defendants' acceptance of these terms are contained on the top of ***Exhibit C*** and specifically
 10 states "David, I can confirm the settlement terms below to be set forth in standard and
 11 reasonable language in the settlement." ("Settlement Agreement").

12 6. In light of the Defendants' acceptance of the terms in the Settlement Agreement,
 13 Plaintiff immediately drafted a Release and Settlement Agreement, Stipulation to Entry of
 14 Judgment, and the Stipulated Consent Judgment ("Settlement Documents"). As requested by
 15 Defendants' counsel, the Settlement Documents contained "standard and reasonable
 16 language" and contained all of the essential substantive agreements of the parties concerning:
 17 the amount to be paid, the date payment was due, the execution of a stipulated consent to
 18 judgment for all, not just some of the Defendants, and the conditional escrow of the Stipulated
 19 Consent Judgment.² These Settlement Documents were forwarded to Defendants' counsel on
 20 March 1, 2024. Copies of the Settlement Documents forwarded to Defendants' counsel are
 21 attached hereto as ***Exhibit D***.

22 7. On March 3, 2024, Defendants' counsel acknowledged the receipt of the
 23 Settlement Documents and acknowledged they were reviewing the same. Shortly thereafter
 24 Defendants' counsel, by phone call, reported it was too difficult to get all the necessary
 25 signatures from all the Defendants and requested an edit allowing only one person to endorse
 26 on behalf of all Defendants. Plaintiff responded by consenting to the request as long as there
 27

28 ² See page 4 of the Release and Settlement Agreement attached hereto as ***Exhibit D***.

1 was a representation by counsel that the signatory had authority to execute for each Defendant.

2 8. Defendants ultimately provided redlined edits to the Settlement Documents, most
 3 of which were cosmetic, but the primary substantive edit was to eliminate the Individual
 4 Defendants from executing the Stipulated Consent Judgment against themselves. When
 5 Defendants' counsel suggested this change, he did not claim that the Individual Defendants
 6 had not agreed that they would consent to judgment.

7 9. In an attempt to avoid litigation to enforce the Settlement Agreement, and still
 8 maintain the essential agreed to settlement provision that the Individual Defendants could
 9 ultimately become liable in the event of nonperformance, Plaintiff proposed an edit to the
 10 Settlement Documents. The proposed edit would not require the Individual Defendants to
 11 initially execute the Stipulated Consent Judgment but would still ultimately have the
 12 Individual Defendants subject to the Stipulated Consent Judgment if the settlement payment
 13 was not timely made. This proposed edit was consistent with the Settlement Agreement that
 14 all Defendants would be joint and severally liable for the full amount prayed for in Plaintiff's
 15 complaint if the agreed performance was not rendered to Plaintiff.

16 10. At no time since February 21, 2024, or February 28, 2024, when Defendants
 17 agreed to the Settlement Agreement, the terms of which required all Defendants to be
 18 conditionally bound by a Stipulated Consent Judgment, have the Defendants ever asserted
 19 that they did not agree to have all Defendants, not just the Corporate Defendants, be bound to
 20 a conditional Consent to Judgment. The Defendants' only comments have been that there
 21 were delays in executing the Settlement Documents due to vacations, and most recently on
 22 March 25, 2024, that Defendants were working on "expediting this payment," another
 23 admission of a Settlement Agreement. Attached as ***Exhibit E*** are copies of correspondence
 24 with Defendants' counsel confirming the representations contained in this paragraph.

25 11. Prior to filing the motion herein, Plaintiff, on March 18, 22 and 25, 2024,
 26 communicated to Defendants' counsel that a Motion to Enforce Settlement Agreement would
 27 have to be filed if Defendants would not comply with the Settlement Agreement. Plaintiff's
 28

1 counsel has received no response to these entreaties.

2 **II. Relief Sought**

3 Plaintiff respectfully requests this Court to issue an Order specifically enforcing the
4 terms and conditions of the Parties' Settlement Agreement as they are established in ***Exhibit***
5 ***C***, as follows:

- 6 1. Defendants execute and tender to Plaintiff the Release and Settlement Agreement,
7 the Stipulation and Consent to Entry of Judgment, and the Stipulated Consent
8 Judgment, all attached as ***Exhibit D*** ("Executed Settlement Documents"); and
- 9 2. Plaintiff to hold in escrow the Executed Settlement Documents for a period of 45
10 days pending Defendants' payment of \$186,421 ("Settlement Payment") to
11 Plaintiff; and
- 12 3. If Defendants do not timely tender said Settlement Payment to Plaintiff, Plaintiff
13 may release from escrow the Settlement Documents, file with this Court the
14 Stipulation and Consent to Entry of Judgment and the Stipulated Consent
15 Judgment and fully exercise its rights as a judgment creditor as against of all of
16 the Defendants; and
- 17 4. However, should Defendants timely tender the Settlement Payment to Plaintiff,
18 the Release and Settlement Agreement may be released from escrow and the terms
19 and conditions of said Release and Settlement Agreement will be deemed
20 effective and may be relied upon by the Parties.
- 21 5. For any such other and further relief as this Court deems just and proper.

22 DATED: April 2, 2024

23 **LAW OFFICE OF DAVID J. NOONAN**

24 /s/ David J. Noonan

25 David J. Noonan, Esq. (Pro Hac Vice)
26 32 Tanglewood Road
27 Amherst, Massachusetts, 01002
28 noonan@law-djn.com

Attorneys for Plaintiff FAVORITE
HEALTHCARE STAFFING, LLC

1 **RADIX LAW**
2 Gary N. Lento, Esq.
3 15205 N. Kierland Blvd., Suite 200
4 Scottsdale, Arizona 85254
5 (602) 606-9300
6 lento@radixlaw.com

7
8
9
10 *Local Counsel for Plaintiff FAVORITE*
11 *HEALTHCARE STAFFING, LLC*

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on April 2, 2024, the foregoing document and any attachments
14 were emailed to the participants as listed below.

15 Brendan A. Melander
16 Brandon Stein
17 **HUSCH BLACKWELL LLP**
18 2415 E. Camelback Road, Suite 500
19 Phoenix, AZ 85016
20 Brendan.Melander@huschblackwell.com
21 Brandon.Stein@huschblackwell.com

22 Matthew D. Knepper (*Pro Hac Vice*)
23 Theresa M. Mullineaux (*Pro Hac Vice*)
24 **HUSCH BLACKWELL LLP**
25 8001 Forsyth Blvd., Suite 1500
26 St. Louis, MO 63105
27 Matthew.Knepper@huschblackwell.com
28 Theresa.Mullineaux@huschblackwell.com
 Attorneys for Defendants

29 By: /s/ Gary N. Lento

30 Gary N. Lento